

STATE OF MICHIGAN
COURT OF APPEALS

APRIL MARISSA BRYAN,

Plaintiff-Appellee,

v

ERIC TAVARES DREW,

Defendant-Appellant.

UNPUBLISHED
September 3, 2009

No. 284361
Washtenaw Circuit Court
LC No. 07-001706-DO

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from the parties' judgment of divorce, challenging the trial court's distribution of marital debt between the parties. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties began living together in January 2006, and married in July 2006. Before trial, the parties stipulated that the court should divide any debt the parties incurred between January 1, 2006 and July 17, 2007, as a result of wedding expenses. Defendant took out a loan in January 2006 for \$9,012. According to defendant, this loan was for school and wedding expenses. In March 2006, defendant received a disbursement check from that loan in the amount of \$4,026.70. Defendant stated that he cashed this check and gave the entire amount in cash to plaintiff to pay for wedding expenses. However, plaintiff denies ever having received this money. Defendant submitted into evidence a statement of account indicating he had received the loan.

Defendant argues that the trial court erred in failing to accept into evidence a copy of the March loan disbursement check. We do not agree. The decision to exclude evidence is within the sound discretion of the trial court and is reviewed for an abuse of discretion. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999).

Defendant does not suggest any reason for admitting the loan disbursement check other than to show he received it. However, the court received into evidence defendant's testimony and his account statement indicating he received the check. Because evidence is properly

excluded if it comprises “needless presentation of cumulative evidence,” MRE 403, the trial court did not abuse its discretion in refusing to admit the check.

Defendant also argues that the trial court erred in not allowing him to admit evidence of the date on which he cashed the loan check. However, defendant failed below to preserve this issue for appeal. “[T]he proponent of evidence excluded by the trial court must make an offer of proof” to the trial court, so that the substance of the excluded evidence is made known. *City of Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 290; 730 NW2d 523 (2006). Defendant, however, has failed to identify what piece of proffered and rejected evidence would have conveyed this information. Defendant may not “assert an error and then leave it up to this Court to discover and rationalize the basis for his claims.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). In any event, we can find no indication in the record that this evidence was ever offered to the trial court, let alone excluded. Because there is no indication that this evidence was in fact excluded by the trial court, there is nothing to predicate error upon.

Lastly, defendant argues that the trial court erred in failing to include the \$9,012 loan as part of the divisible marital debt. Again, we disagree. Divorce cases require trial courts to make dispositional rulings predicated on factual findings, which are reviewed for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 893 (1992). Thus, a lower court’s factual findings will be upheld unless, based on all the evidence, we are “left with a definite and firm conviction that a mistake has been committed.” *Berger v Berger*, 277 Mich App 700, 702; 747 NW2d 336 (2008). “If the findings of fact are upheld, [we] must decide whether the dispositive ruling was fair and equitable in light of those facts.” *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992). Dispositional rulings, such as the division of marital property, “should be affirmed unless the appellate court is left with the firm conviction that the division was inequitable.” *Id.* at 152.

The trial court’s finding that the amount of the March loan disbursement check was not given to plaintiff to be used for wedding expenses was not clearly erroneous. When factual matters turn on which witness is to be believed, “regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Sparks, supra* at 148 n 5. Additionally, while defendant has demonstrated that he received the check, he has not presented direct evidence, beyond his contradicted testimony, indicating that any amount was then transferred to plaintiff. Accordingly, it was not clearly erroneous for the trial court to determine that the subject amount was not given to plaintiff.

Based on this factual determination, the trial court did not err in excluding this amount from the divisible debt. Defendant stipulated that the debt to be divided during this period be related to the wedding. Because defendant agreed to this condition, it is not inequitable to exclude debt that fails to satisfy that condition. Furthermore, defendant failed to provide any

evidence that the remaining portion of the loan, beyond the amount he received from the March loan disbursement check, was used for wedding expenses. Accordingly we find that the trial court did not err.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra